

REMARKS/ARGUMENTS

Claims 21-55 are pending in the application. In an Office Action dated 16 March 2004, claims 21-25, 27-36, 38-44, and 46 were rejected, and claims 26, 35, 37, 45, and 47 were objected to. The present amendment amends the claims. In view of the present amendments and the following remarks, the applicant submits that the claims are allowable over the cited art.

Rejections under 35 USC § 102(b)

Claims 21, 22, 27-31, 36, 38-41, and 46 were rejected as being anticipated by U.S. Patent No. 4,121,666 to Rozniecki. The Rozniecki reference discloses an upright fuel tank for a military vehicle having a panel containing pressurized fire suppressant.

To support a rejection under § 102, a prior art reference must disclose each and every element and limitation in the rejected claim. The Rozniecki reference does not, however, disclose a shatterable container as required by claims 21, 30, and 40. On the contrary, the panel of the Rozniecki reference comprises "a material that will not easily fragment" (col. 3, line 20). Further, the Rozniecki reference indicates that the "wall 40 [of the panel] should not splinter into fragments" (col. 3, lines 21-22). Thus, the Rozniecki reference specifically teaches away from the claimed invention.

Claims 21-23, 27-32, 36, 38-42, and 46 were rejected as being anticipated by U.S. Patent No. 5,762,145 to Bennett, particularly referring to Figure 1-9. The Bennett reference discloses a hollow panel with an extinguishant sealed inside. The Bennett reference does not, however, disclose a container that is a single unit configured to conform to a surface of and at least partially enclose the hazardous material container as required by claims 21, 30, and 40. Figure 4 of the Bennett reference may disclose a partially enclosed container, but the enclosure is not a single unit, instead comprising multiple units. The remaining cited Figures 1-9 also fail to disclose a single unit conforming to a surface of and at least partially enclosing the container.

Rejections under 35 USC § 103

Claims 24, 33, and 43 stand rejected as being obvious in view of the Rozniecki reference. Likewise, claims 25, 34, and 44 stand rejected as being obvious in view of the Rozniecki

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reference and U.S. Patent No. 2,911,049 to Crouch. The applicant respectfully traverses the rejections. As discussed above, the Rozniecki reference expressly teaches away from the claimed invention in claims 21, 30, and 40, on which the rejected claims depend. Consequently, the applicant respectfully submits that it is not a mere matter of design choice to arrive at the claimed invention including a shatterable container.


Objected to claims

The applicant notes and appreciates the acknowledgement that claims 26, 35, 37, 45, and 47 would be allowable if rewritten in independent form. In view of the present amendments, the applicant submits that all claims are now in condition for allowance, including the independent claims and intermediate claims on which claims 26, 35, 37, 45, and 47 depend.

CONCLUSION

In sum, the applicant respectfully submits that all claims are patentable over the cited references and are in condition for allowance. If there are any questions or concerns, please contact the undersigned at the telephone number indicated below.

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